

REMARKS/ARGUMENTS

This Amendment is submitted in response to the Official Action of February 16, 2005. Reconsideration and allowance of claims 1-16 in view of the amendments made herein and the arguments presented are respectfully requested.

Claim 4 has been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The amendments made in response to this Office Action provide the antecedent basis for original claim 4. Looking at Figure 1, the first forceps half 12 is a handle and the second forceps half 14 is a body that is joined to the handle by a fastener 16 to permit the handle and body to pivot relative to one another. Thus, the objection based upon 35 U.S.C. §112, first paragraph, should now be withdrawn.

Claims 1-16 have been rejected under 35 U.S.C. §102(e) as being anticipated by the Yamauchi et al. U.S. Patent 6,736,813. This rejection is respectfully traversed. By virtue of their dependency on independent claim 1, all claims in the application require that the first of the opposed jaws have at least a first sealing electrode and the other of the opposed jaws have at least a second sealing electrode. In the Yamauchi et al. reference, first and second sealing electrodes (453a and 453b) are on one jaw of the device and the opposed jaw carries only a cutting electrode (455). Given this difference, neither claim 1 nor dependent claims 2-16 are anticipated within the meaning of 35 U.S.C. §102(b).

Moreover, the Yamauchi et al. patent fails to teach or suggest a second jaw whose cross section exhibits a raised central zone adapted to conform to the recited recess formed in the first of the opposed jaws. In Yamauchi et al., it is not the jaw that exhibits a raised central zone but merely the cutting electrode 455 mounted on the jaw that protrudes from an otherwise flat jaw surface.

A further distinction between what applicant claims and what is described in the Yamauchi et al. '813 patent is that in the '813 patent the raised central zone does not "conform" to the opposite jaw surface. In Figures 13-15 of the Yamauchi et al. '813


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patent, the cutting electrode is a narrow line contact up against a substantially wider concave surface.

For the reasons advanced then, applicants' claimed arrangement differs in several important respects from the forceps jaw configurations described in the Yamauchi et al. '813 patent, thereby negating a finding of anticipation. Furthermore, given these differences and the relatively crowded state of the art, applicants' claimed arrangement cannot fairly be said to be obvious from the cited art of record in this application. Accordingly, claims 1-16 are believed to be in condition for allowance and a Notice to that effect is respectfully solicited.

Respectfully submitted,

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A handwritten signature in dark ink, appearing to read "Thomas J. Nikolai", is written over the printed name.

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CERTIFICATE OF MAILING

hereby certify that the foregoing Amendment in response to the Official Action of February 16, 2005 in application Serial No. 10/657,378 of inventors, Scott T. Latterell, et al., filed September 8, 2003, for "Bipolar Electrosurgical Instrument for Cutting, Desiccating and Sealing Tissue" are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: MAIL STOP NON-FEE AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 13, 2005.

Thomas J. Mikofski